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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

B5

[redacted]

DATE: JAN 05 2012 OFFICE: NEBRASKA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner seeks to classify the beneficiary pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions with postbaccalaureate experience equivalent to an advanced degree. The petitioner, a manufacturer of high performance communication products, seeks to employ the beneficiary as an engineer. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the beneficiary qualifies for classification as a member of the professions with the equivalent of an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States. On appeal, the petitioner submits a brief from counsel and copies of previously submitted exhibits.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
>
> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the beneficiary qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now USCIS] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. Next, the petitioner must show that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The intention behind the term "prospective" is to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The petitioner filed the Form I-140 petition on December 14, 2009. In an accompanying letter, [redacted], the petitioner's immigration case manager, stated:

> We have offered [the beneficiary] a permanent position as a Member of Technical Staff (Engineer), where he would continue to be involved in the design, development and maintenance of Internet Protocol (IP) and Multi-Protocol Label Switching (MPLS) signaling software as a crucial part of Juniper Operating Systems (JUNOS) routing protocols team. [The beneficiary] has been working to create more reliable, efficient and secure network switches and routers, to the benefit of the United States economy, defense and working conditions. . . .
>
> [The petitioner] designs, develops, and sells products and services that provide network infrastructure, which creates environment for accelerating the deployment of services and applications over a single Internet Protocol (IP) based network. . . .
>
> [The beneficiary] is responsible for the following:

- Provide support for Multicast Virtual Private Network (VPN) to use Label Distribution Protocol (LDP) Point to Multi-point (P2MP) Label Switch Paths (LSPs) as provider tunnels in Juniper Operating System (JUNOS);
- Implement P2MP extensions to LDP LSPs to allow for data delivery in a point-to-multipoint fashion in an [*sic*] Multi-Protocol Label Switching (MPLS) core network;
- Addition of nonstop routing support for LDP Operations Administration Maintenance (OAM) which used Bidirectional Forwarding Detection (BFD) in JUNOS;
- Addition of failure actions for LDP LSPs which are triggered by BFD down events; and
- Maintain LDP code based and fix numerous issues in this area.

. . . As demonstrated by his past record of original scientific research and noteworthy work for distinguished companies, his authorship of a published article at an international conference and reference letters from experts in the field, [the beneficiary's] continued employment in the U.S. will provide significant future benefits to the national economy and work environments of companies across the country. . . .

[The beneficiary's] work on the overall quality and reliability of integral networking products is of substantial intrinsic merit because it (1) improves the U.S. economy by ensuring the quality of [the petitioner's] products in a competitive international market and (2) benefits U.S. companies by reducing costs, increasing employee output and improving working conditions with faster, more reliable and more secure private and public networks. . . .

The benefits of [the beneficiary's] important work in network routing span the entire nation and are not limited in geographic scope. [The petitioner's] market success has a significant positive impact on the U.S. economy as a whole, generating taxable revenue and international acclaim for U.S. technological research and development. The benefits of national security are also applicable to the entire nation, with secure information transmissions critical to ensuring national defense.

Finally, it is difficult to think of an industry today that is not dependent upon the Internet and the telecommunication industry. [The petitioner's] products are the basis of networks across the nation, essential for the functions and applications of numerous U.S. companies across myriad industries. The efficiency and reliability of these networking routing products, as designed and developed through [the beneficiary's] work, are improving the work conditions and economic outputs of U.S. companies nationwide. . . .

> [The beneficiary's] work serves the national interest to a substantially greater degree than a similar, minimally qualified worker because he has proven expertise in design, enhancement and implementation of next generation networking routers and switches, which he has already been applying as part of [the petitioner's] engineering team. . . .
>
> [The beneficiary] is an accomplished software engineer who stands out in his field based on his particular expertise and experience in quality assurance of networking products. . . . [The beneficiary] has already made valuable contributions to the field of network infrastructure technology and continues to develop groundbreaking network software today. . . .
>
> [The beneficiary] has a proven track record of success in network software engineering and innovation. From March 2004 to June 2007, [the beneficiary] contributed his talents to improving network technology at [redacted] At [redacted] [the beneficiary] achieved numerous significant advances in various routing protocols. He implemented [redacted], the core routing protocol of the Internet, graceful restart and added security functions for a Broadband testing system. [The beneficiary] further developed [redacted] to support [redacted]. He enhanced several other protocols to support graceful restart and implemented additional security measures. [The beneficiary] played a critical role in maintaining numerous routing protocols on a Broadband platform and fixing existing software bugs in the system.
>
> In his present role at [the petitioning company], [the beneficiary's] unique expertise in network routing software is of tremendous value in the continued development of cutting edge, next generation networking products. His extensive knowledge of routing protocols and Point to Multi-point network technology has been a critical component of [the petitioner's] advancement and successes in the field.

The petitioner submitted a copy of the first page of a conference presentation that the beneficiary co-authored while he was a graduate student at the University of Hawaii. The petitioner submitted no evidence of the importance or impact of this presentation, nor did the petitioner establish that the presentation of a conference paper is a highly significant achievement unmatched by most graduate students in the beneficiary's specialty. [redacted] basically claimed that the presentation's very existence self-evidently demonstrates the beneficiary's talent and the importance of his work.

Two witness letters, both from individuals who had worked with the beneficiary at [redacted] accompanied the initial submission. [redacted], stated:

> After finishing his Master degree, [the beneficiary] joined my team at the [redacted] software development department of [redacted] in March 2004. He demonstrated his outstanding technical skills within a short period of time after joining the company. As his manager, I have witnesses his extraordinary ability in

this field. He has performed in critical and leading roles in many projects that were not expected from a fresh graduate. For example, [the beneficiary] played a key role in implementing [redacted] graceful restart for [redacted] Broadband testing system and adding MD5 support for [redacted]. These were groundbreaking developments and critical to maintaining the efficiency and security of the core routing protocol of the Internet.

[redacted], stated:

From July 2006 to June 2007, I was [the beneficiary's] manager at [redacted] Soon after becoming his manager, I recognized just how unique and exceptional his software engineering skills are and just how extensive his knowledge of networking protocols is. As his manager, I relied on [the beneficiary] to solve some of the most difficult and complex software problems we encountered. His analysis was always insightful, and his ability to deliver solutions was outstanding. His contributions were critical to our routing and Carrier Ethernet test solutions. [The beneficiary] consistently outperformed his peers and was rated as a role model. Since his departure from [redacted] we have been unable to replace [the beneficiary's] unique skill set with any of our subsequent new hires.

On February 11, 2010, the director instructed the petitioner to "submit further evidence to corroborate claims that the national interest would be adversely affected if a labor certification were required" and "to establish that the beneficiary has a past record of specific prior achievement that justifies projections of future benefit to the national interest." The director specified that the petitioner "must demonstrate the beneficiary's influence on his field of employment as a whole."

In response, [redacted] senior engineering manager for the petitioning company, stated:

[The beneficiary] has made outstanding contributions in the area of networking equipment for the Internet infrastructure and he is invaluable in ensuring that the United States continues to maintain its leadership in the growth of the Internet. [The beneficiary's] work is directly related to the upcoming deployment of next-generation mobile services and extremely high-speed Internet services. . . .

I have been his manager for the past 2 years. I can say without hesitation that [the beneficiary] is outstanding in his field and his continued work in the U.S. will greatly benefit the nation. My group at [the petitioning company] is responsible for setting the vision and direction of enabling Internet services such as video delivery, online movies and TV-based video-conferencing. [The beneficiary's] contributions are very critical for these services to become a reality. Within a short span of time, [the beneficiary] took over responsibilities of the level of senior engineers and architects. He has a great system-wide knowledge and is currently interacting with and helping the Internet providers in designing their next generation networks. [The

> beneficiary's] work on next-generation video-delivery on the Internet was demonstrated recently as a prestigious world conference in Paris – [redacted] and was it [*sic*] very well received. His upcoming work is directly related to making low-cost telecommunication equipment that can provide 10-times faster Internet access to our homes. The benefits of this work will reach the entire nation as a whole.
>
> . . . [The beneficiary's] work is directly related to the fast-paced progress of the Internet and greatly contributes to keeping the U.S. at the forefront of research and progress in the industry.

The director denied the petition on August 4, 2010. The director acknowledged the substantial intrinsic merit and national scope of the beneficiary's occupation, but found that the petitioner had not established that the beneficiary "has personally achieved a record of success in the field, or recognition by his peers or by governmental agencies, which warrant a national interest waiver."

On appeal, counsel cites previously submitted evidence, stating:

> [The beneficiary's] exceptional qualifications are reflected in his past record of success as an engineer, his authorship of an article published at a prestigious international conference, and reference letters from three experts in the field. . . . The Administrative Appeals Office has found that letters of support mostly from colleagues are sufficient to satisfy the criteria for national interest waiver, when the field is nonresearch and more narrow.

The witnesses have asserted that the beneficiary is an above-average engineer in his specialty, but have provided no concrete demonstration of the beneficiary's impact on his field. The regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not automatically exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

To support the assertion about "letters of support mostly from colleagues," counsel cites an unpublished AAO decision from 2003. Counsel has furnished no evidence to establish that the facts of the instant petition are comparable to those in the unpublished decision. While the USCIS regulation at 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding.

The Board of Immigration Appeals (BIA) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing

cases). The BIA also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

The opinions of experts in the field are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as we have done above, evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)).

In this instance, several witnesses have asserted that the petitioner played a significant role in a particular project, but the record lacks objective evidence to show the importance of the project relative to other efforts undertaken by the petitioner and other comparable companies. The overall size or influence of the petitioning entity does not grant proportional importance to all projects within that company. The witness letters do little more than attest to the beneficiary's professional competence in his chosen field, with no demonstrable indication that the beneficiary stands out from his peers to an extent that would justify the additional benefit of a national interest waiver.

The significance of the beneficiary's individual contributions is not self-evident from the descriptions provided, and it cannot suffice for the petitioner simply to describe those contributions and declare them to be particularly important. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.